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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

10 LEE MAX BARNETT,

11 Petitioner, No. CIV S-99-2416 DFL CMK DP

12 vs. **DEATH PENALTY CASE**

13 ROBERT WONG, Acting Warden,

14 **ORDER**

15 Respondent.

16 On June 5, 2006, the court filed an order stating that the court was poised to grant
17 petitioner's motion to file a third amended complaint, reserving ruling on issues of exhaustion and
18 relation back until a more appropriate time in the proceedings. The court directed respondent to
19 show cause on or before July 31, 2006 why the court should not grant petitioner's request to file a
20 third amended complaint pro nunc tunc to May 10, 2006.

21 On July 25, 2006, respondent filed a response. Respondent stated that he
22 understood the court's June 5, 2006 order to mean that the court did not expect respondent to file
23 a responsive brief on the merits to the 118 claims in the amended complaint prior to the resolution
24 of exhaustion and other procedural issues. Respondent stated that, if he was correct in his
25 understanding, that respondent would not oppose petitioner's motion to amend. Respondent is
26 correct in his understanding.

1 Accordingly, the court will grant petitioner leave to file a third amended petition
2 for a writ of habeas corpus. As noted above, the court reserves ruling on issues of exhaustion and
3 relation back until later in the proceedings. At the September 6, 2006 case management
4 conference, the court expects to discuss with the parties a mechanism and time-table for resolving
5 the exhaustion and other procedural issues.

6 Based on the foregoing, IT IS ORDERED that:

- 7 1. The order for respondent to show cause is discharged.
8 2. Petitioner is granted leave to file a third amended petition for a writ of habeas
9 corpus. The lodged third amended petition (doc. 183) is deemed filed pro nunc tunc to May 10,
10 2006. The court will reserve ruling on exhaustion and other procedural issues until a later time.

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12 DATED: July 28, 2006.

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15 CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE

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